

## Juridical Analysis of the Duties and Authority of a Notary in Legal Consequences of Divorce Related to Making a Deed of Distribution of Property Together

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### ABSTRACT

Relating to the role of the Notary in property matters in Divorce In this case, joint property means that the Notary has legal standing to be able to separate and provide protection for assets whichever is considered joint or deemed property as inherited assets for both parties, the Notary has a role important in determining the status and distribution of assets within divorce The legal research method used in this research is empirical juridical research and yu Legal research methods used in This research is normative juridical and empirical juridical research is research carried out or aimed only at written regulations and conducting research related to the implementation of the law within Community through interviews with the nature of descriptive analysis research is a method that functions to describe or give description of the object under study. The data source used is data primary and secondary with quantitative data analysis. The results of this research are The role of a notary in the separation of joint assets due to divorce is related with the authority of a Notary in making authentic deeds relating to agreement on the separation of joint assets as a result of a divorce, the authority to make a deed This authentication is the authority of the Notary as regulated in Law no. 30 of 2004 concerning Notary Positions Implementing the Principles of Justice In the process of separating joint assets due to divorce, it is carried out by a mechanism for sharing joint assets that focuses on equal rights Before the law, the division of assets itself is not based on contributions who is the biggest in marriage as long as it is not determined otherwise in agreement. In the event of a divorce, the assets are divided in half evenly based on applicable laws.

**Keywords:** Notary,  
Joint Property,  
Divorce

### INTRODUCTION

Marriage law is strictly regulated in Law Number 1 1974 concerning Marriage (hereinafter referred to as Law Marriage) in its implementation of the Marriage Law is not only rules that regulate the implementation of marriage but also regulate about the subject and how to break up or end a marriage with all legal consequences. The continuation of the marriage will have legal consequences, which is wrong the other is related to marital assets, whether acquired before the marriage or during marriage. Assets during marriage are proceeds what a person acquires and owns during his or her life is well earned alone or jointly between husband and wife without dispute registration in anyone's name. The wealth that is obtained by the husband/wife at the time of marriage is joint assets, this is in accordance with Article 35 paragraph (1) of the Marriage Law which states that the assets obtained during the marriage took place is to be joint property, in the sense that joint property is of a nature absolute.

In the event of a divorce, generally apart from the matter of divorce being wrong One problem that often arises in divorce disputes is regarding property goni regarding assets in marriage, these assets are divided into two, namely joint assets and inherited assets. Despite the Act Marriage has clear regulations

regarding inheritance and property together but often this becomes a dispute where one of the parties feel that the joint assets that have been acquired during the marriage constitute inherited assets and vice versa inherited assets acquired before marriage or is an inheritance or gift from one of the husbands or wives This joint property then becomes a problem during marriage previously implemented did not have an agreement on the separation of assets or marriage agreement.

Article 126 of the Civil Code explains that "Joint property is dissolved by law due to death, marriage with the judge's permission after the absence of a husband or wife, divorce, separate table and bed, separation of assets. Explanation of Article 126 of the Law Code The civil law states that divorce results in the dissolution of assets together so that the joint assets must be divided between the spouses husband and wife". Relating to assets in marriage which often give rise to problems in divorce resulting from a mix of assets wealth, where personal assets are often included in the treasury together or vice versa, then with that issue the Court

The Constitution provides Constitutional Court Decision No. 69/PPU/XXI/2015 which states that "before it takes place or during the bond marriage, both parties can submit a written agreement legalized by a Notary, which if there is a third party involved, then the contents also apply to third parties." Based on Constitutional Court Decision No. 69/PPU/XXI/2015 in In the process of separating joint assets, it is necessary to have a notary as a mediator between the two parties in arranging the distribution of mutually beneficial assets or as officials as his position is regulated by the law that created it property separation agreement or marriage agreement as an authentic deed. Deed Authentic in this case can clearly determine rights and obligations, guarantee legal certainty, and authentic deeds are tools written evidence that has legal force. In this case, in accordance with art 15 paragraph (1) of Law Number 2 of 2014 concerning Notary Positions has explained that "Notaries have the authority to make authentic deeds regarding all deeds and agreements or determination required by statutory regulations and/or which is desired by the interested party to be stated in the deed authentic, guarantee the certainty of the date of making the deed, store the deed, provide groove, copies and extracts of deeds, all throughout the creation the deed is not also assigned or excluded to another official or other persons determined by law" Relating to the role of the Notary in internal property matters Divorce, in this case joint assets, means the Notary has legal standing the law to be able to separate and provide protection for any property whether considered joint or deemed property as inherited assets for both parties, the Notary has a role important in determining the status of an asset in a divorce

## METHOD

This research uses normative juridical research and the nature of this thesis's research method is descriptive analysis, namely research that describes, examines, explains and analyzes a legal regulation, in this case related to Duties and Authorities of Notaries in Legal Consequences In Divorce Related to Making a Deed of Division of Joint Assets, Source The legal materials used in this research are secondary data which is data obtained from official documents, books or any form of research related to research objects and research results in the form of reports, journals, theses, dissertations and statutory regulations. The data analysis technique used is qualitative data analysis, namely a research procedure that produces

analytical descriptive data, namely by collecting materials and data as well as applicable regulations and legislation which are then analyzed using logical legal thinking.

## RESULTS AND DISCUSSION

### Results

The position of a Notary as an official where someone can get reliable advice. Everything written as well established is correct, he is a strong document maker in a legal process, especially regarding legal certainty. Pay attention to various provisions of laws and regulations relating to existence Notaries as Public Officials can know their duties and jobs Notary, which among other things provides public services to make authentic deeds, register and legalize (waarmerken and legaliseren) letters/deeds made privately The position of a Notary as an official where someone can get reliable advice. Everything written as well established is correct, he is a strong document maker in a legal process, especially regarding legal certainty. Pay attention to various provisions of laws and regulations relating to existence Notaries as Public Officials can know their duties and jobs Notary, which among other things provides public services to make authentic deeds, register and legalize (waarmerken and legaliseren) letters/deeds made privately by/before the public official authorized to do so at the place where the deed was made.

Thus, from these two provisions it is known that a Notary is public official, which is a position that is held or given to those who are authorized by legal regulations to make deeds authentic. Notaries as public officials are given the authority to make deeds Authentic The authority of a notary as regulated in Article 15 of the Notary Position Law. One of the authorities of a Notary is make a deed of distribution of joint assets. but problems regarding property Wealth in married life is a very important factor important. Disputes that often occur between the two parties are due to before or after the divorce, each party will fight over the property by claiming that it is "such and such" property. is his. In relation to this, the role of parties is needed others as intermediaries who provide input and legal advice to both parties. The role of the other party referred to in this case is the role of the Notary. In relation to the role of the Notary with needs society is very important, considering that Notaries are officials who have authority in making authentic deeds and in this case, the role of the Notary, namely make a deed of agreement on the distribution of joint assets for both parties based on the results of the agreed calculation of the division of assets carried out by both parties. Thus, the notary has the authority to make a deed of distribution joint property if there has been a divorce, then the notary has no right interfere with the distribution matters and the notary's authority is only limited prepare statements from the parties. Then the results of the agreement between both parties those parties, whatever the results obtained for each party, Later it will be stated in the deed made by the notary.

The results of the interview which was carried out by Notary Indah Permata Sari, SH., M.Kn Notary/PPAT, that the role of notaries in Indonesia is very necessary considering that a notary is a public official who has the authority to make deeds Authenticity includes making a deed of agreement on the division of joint assets. Notary Public as a public official who has the authority to make deeds of property

distribution agreements together based on the wishes of both parties who agree to share their assets fairly through an appropriate joint property distribution agreement with the applicable law. The deed of agreement for the division of assets is made at the time before the divorce occurs, because during the divorce process in court The divorced couple no longer discussed the issue of dividing their assets.

However, it does not rule out the possibility that the couple will divorce If they do not reach an agreement on the division of their assets, the parties will submit a request for the division of joint assets to the Religious Court simultaneously with a divorce suit According to Notary Akmaluddin, SH, so far the distribution of assets has been carried out according to the agreement of the former husband and wife, and in accordance with the regulations applicable law Number 16 of 2019 regarding amendments to law Number 1 of 1974 concerning Marriage which mentions assets inheritance returns to each of the parties who bring property and possessions shared between movable and immovable objects who has proof of ownership of the certificate, the notary uses the position The PPAT is in completing the division of joint assets. of course there is conditions that must be fulfilled by the parties in making this deed namely regarding the documents that support the making of the deed, such as Identity Card, Family Card, Marriage Certificate, and Proof property ownership If these conditions are not met, then a deed can be made is hampered or even the deed cannot be drawn up.

Conclusion of the results analysis above, that the role of the notary in making the deed of distribution agreement joint assets are very important, because the notary is a public official make a deed of agreement for the distribution of joint assets based on the will of the both parties who agree to divide joint assets fairly and The notary must ensure that the conditions specified by law for the validity of a deed have been fulfilled by the parties and also regarding the origin of the ownership of the assets of the parties, whether the assets are assets acquired during the marriage or assets inherited from their parents, grant or gift, this must be proven by ownership of the origin of the property If the parties cannot attach proof of ownership of the origin the property, there will be problems in making the deed or it cannot be done if there is no basis for the deed. Next is the implementation of the distribution of assets based on agreement between the parties and carried out in accordance with regulations The applicable legislation is Law Number 16 of 2019 regarding changes to Law Number 1 of 1974 concerning Marriage

### **Discussion**

The position of a notary is based on trust between the notary and the party involved use his services. Therefore, he can only give, show, or informing the contents of the deed, grosse deed, minutes of deed, copy of deed/excerpt from deed to directly interested persons or parties mentioned in deed, heir. In Article 4 paragraph (2) UUJN regarding the notary's oath or promise confirm that I (the notary) will keep the contents of the deed and information confidential obtained in carrying out my position and Article 16 paragraph (1) letter e UUJN, that the Notary is obliged to keep everything regarding the deed confidential which he made and all the information obtained in order to make the appropriate deed with an oath/promise of office, unless the law determines otherwise. In general, the Notary is obliged to keep the contents of the deed and information obtained in making a Notarial deed, unless ordered by law that Notaries are not obliged to keep confidential and provide the

necessary information relating to the deed, thus the limitation is that only the law can order the Notary to disclose the contents of the deed and information/statements known to the Notary relating to making the deed in question. The tasks carried out by a notary include making an authentic deed.

Deed referred to, is an authentic deed made by or before a notary according to forms and procedures stipulated in this law. In addition Administrative forms of deeds are regulated in the Regulations Government and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia which explains the procedures technical implementation in the field With regard to notary authority specifically regulated in Article 15 of the Law No. 2 of 2014: Paragraph 1 Notaries have the authority to make authentic deeds regarding all acts, agreements and stipulations required by regulations legislation and/or as desired by interested parties stated in an authentic Deed, guaranteeing the certainty of the date of making the Deed, keeping the Deed, providing grosse, copy and quotation of the Deed, all that as long as the making of the Deed is not assigned or excluded to another official or other person as determined by law. The authority of a notary as regulated in Article 15 of the Law on the Position of Notary. One of the authorities of a Notary is make a deed of distribution of joint assets. but problems regarding property Wealth in married life is a very important factor important.

Disputes that often occur between the two parties are due to before or after the divorce, each party will fight over the property by claiming that it is "such and such" property. is his. In relation to this, the role of parties is needed others as intermediaries who provide input and legal advice to both parties. The role of the other party referred to in this case is the role of the Notary. A legal act that causes joint property to arise is "marriage" whether marriage is regulated based on Article 26 of the Criminal Code and so on, as well as marriage as regulated in Law no. 1 of 1974 about Marriage. There are two names for dissolution of marriage due to divorcenamely "divorce sue" and "divorce talak", this mention shows the impression of existence dispute between husband and wife. In this case the right to divide marriage through divorce is no longer the husband's monopoly. The wife is given the right to filed a divorce suit for joint assets according to Article 119 of the Criminal Code on In essence, it is stated that starting from the time the marriage takes place, By law, there is a complete union of the assets of husband and wife to the extent no marriage agreement was entered into regarding this matter. Based on the positive law that applies in Indonesia, joint assets are divided equally between ex-husband and ex-wife. This is of course if There is no marriage agreement regarding the separation of assets carried out by the couple husband and wife carried out before and after the marriage contract. Article 37 of Law No. 1 of 1974 concerning Marriage determines that if marriage is dissolved due to divorce, joint property is regulated according to the law each. What is meant by each law is law religion, customary law and other laws. In the Civil Code (BW), regarding Joint Property according to Law and its Management, is regulated in Chapter VI Articles 119-138, which consists of three parts.

Part One concerning Joint Assets according to Law (Article 119- 123), Second Part concerning Management of Joint Assets (Article 124- 125) and Part Three concerning Dissolution of Combined Joint Assets and Rights To Relinquish Yourself to Him According to the Civil Code Since If a marriage takes place, then according to



the law there will be joint property between husband and wife, as far as that is concerned is not held provisions in the marriage agreement. For those subject to Western Civil Law (BW) regarding assets obtained during marriage in Article 119 BW (Civil Code) states that starting from the moment the marriage takes place, the law applies the union between the moon union between the wealth of husband and wife, simply Regarding this, there are no other provisions in the marriage agreement. That union as long as the marriage cannot be abolished or changed in any way agreement between husband and wife.

Article 35 paragraph (1) Law Number 16 of 2019 regarding amendments to the Law Number 1 of 1974 concerning marriage states that joint assets are assets that are acquired during marriage. It needs to be emphasized that the meaning of joint property does not only include acquired assets alone, but also includes debts incurred during the marriage. This is purposeful to balance the rights and obligations of husband and wife regarding debts togetherness that arises during marriage. Mixing of assets occurs after the marriage, so at that time Joint property institutions exist and bind husband and wife. even if mixed property occurs according to law, does not mean that the situation cannot be avoided or excluded. Marriage law (positive law) provides a way out, namely by making a marriage agreement that clearly separates assets husband and wife in marriage.

The existence of the marriage agreement is confirmed in Article 29 of the Marriage Law. A marriage agreement is made before the prospective husband and wife get married and it is done (recorded) in front of a registrar marriage. Regarding the object or purpose of the marriage agreement, it is stated in detail implicit in Article 35 paragraph (2) of the Marriage Law, namely "as long as the parties do not determine otherwise." This provision implies that the parties Before the marriage occurs, you can make a written agreement regarding mixing and separating assets acquired by both before and after marriage, distribution of joint property for followers of religions other than Islam is based on Article 128 of the Civil Code which states: "After the dissolution of the union, the assets of the union are divided in half between husband and wife, or their respective heirs, and not care about the question from which party the goods were obtained." With these provisions, if a husband and wife divorce, their joint property they are divided into two. The distribution of joint property is regulated in the Law Code Civil and Marriage Laws where assets are divided according to the amount the same or 50:50 percent.

Marriage law does not only regulate chapters regarding joint assets, but also inherited assets. Basically nothing mixing of the husband's assets and the wife's assets due to marriage. Wife's property remains the wife's right and is fully controlled by her, as are the husband's assets. Treasure the inheritance of each husband or wife, as well as the assets obtained by each as a gift or inheritance is completely under their respective control, as long as the parties do not specify otherwise in the agreement marriage. Husband and wife have full rights to carry out actions law on property so that justice can be achieved for each party.

## CONCLUSION

The Role of a Notary in Separating Joint Assets Due to Divorce relating to the authority of a Notary in making authentic deeds relating to the agreement on the separation of joint assets as a result of divorce The authority to make the authentic deed is the authority of Notary as regulated in Law no. 30 of 2004 concerning Notary Position. Application of the Principles of Justice in the Process of Separating Joint Assets The consequences of divorce are carried out using a mechanism for dividing assets together which focuses on equal rights before the law for The division of assets itself is not based on whose contribution has been the most large in marriage as long as it is not specified otherwise in the agreement. In the event of a divorce, the assets are divided equally average based on applicable law.

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